MUR # 1336
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BEFORE THE FEDERAL ELECTION COMMISSION

2018 FEB 29 AM 10: 06

American Democracy Legal Fund 455 Massachusetts Avenue, NW Washington, DC 20001

The Honorable John Michael Mulvaney 725 17th Street, NW Washington, DC 20503 GENERAL COUNSEL

COMPLAINT

American Democracy Legal Fund ("Complainant"), by and through its Treasurer, Brad Woodhouse, files this complaint under 52 U.S.C. § 30109(a)(1) against John Michael Mulvaney ("Respondent Mulvaney"), for converting campaign funds to personal use as prohibited by the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 et seq.

Complainant is a nonprofit organization committed to promoting accountability and ethics in government and campaigns by shining a light on public officials and candidates who put their own interests ahead of public service.

Recent days have brought a sharp focus on so-called "zombie" campaigns, where "[t]he campaign is over ... [b]ut the spending never stops." Public records show that Respondent Mulvaney used his zombie campaign to pay for so-called strategists, private club expenses, travel and direct mail, and even paid himself, months after leaving Congress, and without showing any debts from his last campaign on his prior reports. The FEC should immediately investigate these zombic expenditures.

A. FACTS

Respondent Mulvaney was a Member of the U.S. House of Representatives from South Carolina's Fifth District until he resigned from Congress on February 16, 2017 to serve as President Donald J. Trump's Director of the Office of Management and Budget.²

Commission and public records demonstrate that Respondent Mulvaney was never a candidate for re-election for the 2018 election cycle:

¹ http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/.

² See https://www.congress.gov/crec/2017/02/16/CREC-2017-02-16-pt1-PgH1255-6.pdf.

- They show he filed his most recent Statement of Candidacy with the Commission on January 27, 2015—for the 2016 election cycle.³ They show he filed no Statement of Candidacy for the 2018 cycle.⁴
- President-elect Trump announced his intention to nominate Respondent Mulvaney as OMB Director on December 16, 2016, less than six weeks after the 2016 election.⁵
- Mulvaney for Congress filed a termination report with the Commission on October 13, 2017, that showed \$206.30 in total receipts for the 2018 election cycle.⁶

Still, after Respondent Mulvaney entered the Trump Administration, his defunct campaign committee repeatedly spent funds on activities that appeared to have nothing to do with his past campaigns or Congressional service. These expenditures include:

- \$1,984.86 to Eric Bedingfield—Mulvaney's former deputy chief of staff and campaign manager—for "Strategic Consulting" on July 28, 2017.⁷
- \$769.78 to Starboard Communications Inc for "direct mail" on March 22, 2017.8
- \$750 to Al Simpson—Mulvaney's former chief of staff, who joined the lobbying firm Mercury LLC9—for "Strategic Consulting" on June 21, 2017. 10
- \$541.02 to the Capitol Hill Club for "Meeting Expenses" on June 1, 2017.
- \$541.02 to the Capitol Hill Club for "Catering" on July 17, 2017. 12
- \$457.87 to Gula Graham, a fundraising consultant, for "Travel" on February 28, 2017. 13
- \$440.00 to Respondent Mulvaney himself for "Travel" on May 17, 2017.14

Mulvaney for Congress also had extraordinarily large, redundant compliance expenses for a committee whose cash-on-hand as of December 31, 2016 was only \$156,797.36, and which had no debts or obligations.¹⁵ These included *two* \$17,500 payments made over less than six weeks

³ See http://docquery.fec.gov/pdf/924/15950089924/15950089924.pdf.

⁴ See https://www.fec.gov/data/candidate/H0SC05031/?tab=about-candidate&cycle=2018.

⁵ See https://www.nytimes.com/2016/12/16/us/politics/mick-mulvaney-office-management-budget-trump.html.

⁶ See http://docquery.fec.gov/pdf/872/201710139075651872/201710139075651872.pdf.

⁷ See http://docquery.fec.gov/pdf/872/201710139075651872/201710139075651872.pdf at 6.

⁸ See http://docquery.fcc.gov/pdf/315/201704149052247315/201704149052247315.pdf at 13.

⁹ See https://www.politico.com/tipsheets/politico-influence/2017/02/three-big-hires-for-mercury-218572.

¹⁰ See http://docquery.fec.gov/pdf/578/201707139066623578/201707139066623578.pdf at 7.

¹¹ See http://docquery.fec.gov/pdf/578/201707139066623578/201707139066623578.pdf at 5.

¹² See http://docquery.fec.gov/pdf/872/201710139075651872/201710139075651872.pdf at 6.

¹³ See http://docquery.fec.gov/pdf/315/201704149052247315/201704149052247315.pdf at 8.

¹⁴ See http://docquery.fec.gov/pdf/578/201707139066623578/201707139066623578.pdf at 6.

¹⁵ See http://docquery.fec.gov/pdf/440/201701319042332440/201701319042332440.pdf at 4.

to Huckaby Davis Lisker for "Compliance Consulting," ¹⁶ and an additional \$2,000 payment to the campaign's treasurer, Pat Jenkins, for "Administrative Consulting." ¹⁷

From the Post-General 2016 Report onward, the Mulvaney for Congress reports are conspicuous for their lack of *any* debts or obligations, or *any* officially-connected expenses on Line 21. Thus, the above expenses could *only* have been incurred after Respondent Mulvaney went into the Trump Administration, and they *cannot* have been incurred in connection with the winding-down of his House office or his former House duties.

B. LEGAL ARGUMENT: THE PUBLIC RECORD INDICATES THAT RESPONDENT MULVANEY CONVERTED FUNDS TO PERSONAL USE

As amended by "McCain-Feingold," the Bipartisan Campaign Reform Act of 2002, the Federal Election Campaign Act of 1971 strictly forbids any person from converting campaign funds to personal use. ¹⁸ The law defines "personal use" to mean the fulfillment of any commitment, obligation, or expense that would exist irrespective of a candidate's campaign or federal officeholder duties. ¹⁹ While the law permits a defunct Congressional campaign to wind down its activities and help the former candidate wind down his own Congressional duties, he cannot spend the money however he wants. Rather, each disbursement must fall within a list of specific, enumerated activities. ²⁰ The law permits spending for other lawful activities, but only when they would not occur irrespective of the former candidate's campaign or officeholder duties. ²¹

The Commission has applied these strict rules specifically to Respondent Mulvaney's situation.²² When one of Respondent Mulvaney's predecessors as OMB director sought Commission permission to use campaign funds to pay for transition activities when leaving Congress and joining OMB, the Commission drew a sharp distinction between paying bona fide campaign operating expenses, and paying expenses that would have existed regardless of whether he had run for or served in Congress.²³ The first was allowed—but the second was not.²⁴

Public records indicate that Respondent Mulvaney used his zombie campaign for a series of personal errands that had nothing to do with his prior House race or Congressional service. Mulvaney for Congress filed these records under penalty of false statement. These records show that the campaign sent direct mail four months after the campaign was over, when it had no debts or obligations. They show that the campaign paid two "strategic consultants" almost a year after the election when there was no "strategy" left to be pursued. They show that the campaign made two identical payments to a Republican private club—"your home away from home, a place where you and your guests are always welcome" —one for "catering," and one described more

¹⁶ See http://docquery.fec.gov/pdf/578/201707139066623578/201707139066623578.pdf at 6; http://docquery.fec.gov/pdf/872/201710139075651872/201710139075651872.pdf at 6.

¹⁷ See http://docquery.fec.gov/pdf/872/201710139075651872/201710139075651872.pdf at 7.

¹⁸ See 52 U.S.C. § 30114(b)(1).

¹⁹ See id. § 30114(b)(2).

²⁰ See 52 U.S.C. § 30114(a)(1)-(5).

²¹ See id. § 30114(a)(6).

²² See FEC Adv. Op. 1993-06, http://saos.fcc.gov/aodocs/1993-06.pdf.

²³ See id.

²⁴ See id

²⁵ http://www.capitolhillclub.org/Default.aspx?p=DynamicModule&pageid=345408&ssid=247812&vnf=1.

blandly as "meeting expenses." Finally, the public records show that the zombie Mulvaney campaign paid \$440.00 to Respondent Mulvaney himself, more than six months after the election was over, for "Travel" that was never reported as debt.

C. REQUESTED ACTION

The public record presents reason to believe that Respondent John Michael Mulvaney converted his campaign funds to personal use. Complainant respectfully requests that the Commission seek the maximum penalties permitted by law, determine whether referral for criminal enforcement is required under Commission practice, ²⁶ and enjoin Respondent Mulvaney from future violations of the law.

Sincerely

Brad Woodhouse

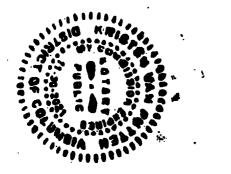
American Democracy Legal Fund

SUBSCRIBED AND SWORN to before me this 23 day of February, 2018.

Notary Public

My Commission Expires:

Nov 30, 2021



²⁶ See https://www.justice.gov/sites/dcfault/files/criminal/legacy/2013/09/30/electbook-0507.pdf at 174-76.